U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF D-S-, INC.

DATE: JUNE 20, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, an IT solutions business, seeks to employ the Beneficiary as a senior SAP consultant. It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant classification. *See* Immigration and Nationality Act (the Act), section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Director, Nebraska Service Center, denied the petition. The Director determined that the record did not establish the Beneficiary's qualifications for the job opportunity, as stated by the ETA Form 9089, Application for Permanent Employment Certification (labor certification). He also found that the Petitioner had not demonstrated its ability to pay the Beneficiary the proffered wage from the visa petition's priority date forward.

The matter is now before us on appeal. The Petitioner contends that the record establishes that the Beneficiary has both the education and experience required by the labor certification. It also submits additional evidence to demonstrate its ability to pay. Upon *de novo* review, we will dismiss the appeal.

I. BENEFICIARY QUALIFICATIONS

Employment-based immigration is generally a three-step process. First, an employer must obtain an approved labor certification from the U.S. Department of Labor (DOL). *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). Next, the employer files a Form I-140, Immigrant Petition for Alien Worker, with U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. If the Form I-140 is approved, the foreign national then applies for an immigrant visa abroad or, if eligible, adjustment of status in the United States. *See* section 245 of the Act, 8 U.S.C. § 1255.

By approving the accompanying labor certification in the instant case, DOL has certified that (a) there are insufficient U.S. workers who are able, willing, qualified, and available for the offered position, and (b) that the employment of a foreign national in the position will not adversely affect the wages and working conditions of domestic workers similarly employed. Sections 212(a)(5)(A)(i)(I),(II). It is then the responsibility of USCIS to determine whether the Beneficiary meets the job requirements specified on a labor certification and the requirements of the requested immigrant classification. *See* section 204(b) of the Act (stating that USCIS must approve a petition if the facts stated in it are true and the foreign national is eligible for the requested preference classification); *see also, e.g., Tongatapu Woodcraft Haw., Ltd. v. Feldman,* 736 F. 2d 1305, 1309 (9th Cir. 1984) (holding that the immigration service has authority to make preference classification decisions); *Madany v. Smith*, 696 F.2d 1008, 1012-13 (D.C. Cir. 1983) (same).

A. Labor Certification Requirements

A petition for an advanced degree professional must be accompanied by a valid, individual labor certification, an application for Schedule A designation, or documentation of a beneficiary's qualifications for a shortage occupation. 8 C.F.R. § 204.5(k)(4)(i). The job offer portion of a labor certification must demonstrate that the job opportunity requires a professional holding an advanced degree or its equivalent. *Id.*

In the present case, the offered position is that of senior SAP consultant, and the Petitioner has checked Item 1.d. in Part 2 of the Form I-140 visa petition, indicating it is seeking to classify the Beneficiary as an advanced degree professional under section 203(b)(2) of the Act.

The regulation at 8 C.F.R. § 204.5(k)(2) defines the terms "advanced degree" and "profession." An "advanced degree" is defined as:

> [A]ny United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

A "profession" is defined as "one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation." Section 101(a)(32) of the Act lists the following occupations as professions: "architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries."

The requirements for the offered position are found in Part H. of the labor certification, which lists the following terms and conditions:

H.4.	Education: Master's.
. . .	
H.4-B.	Major field of study: Computer science.
. . .	
H.7.	Alternate field of study: Accepted.
H.7-A.	Alternate fields of study: Electrical/electronics engineering; business.
H.8.	Alternate combination of education and experience: Accepted.
H.8-A.	Alternate level of education: Bachelor's.
. . .	
H.8-C.	Number of years of alternate experience: 5.
H.9.	Foreign educational equivalent: Accepted.
H.10.	Experience in alternate occupation: Accepted.
H.10-A.	Number of months in alternate occupation: 60.
H.10-B.	Job title of alternate occupation: Systems analyst, management, or similar.

When determining whether a beneficiary is eligible for a preference immigrant visa, USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *Madany*, at 1012-13. We must examine "the language of the labor certification job requirements" in order to determine what the job requires. *Id.* The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to examine the certified job offer exactly as it is completed by the prospective employer. *See Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984). Our interpretation of the job's requirements must involve reading and applying the plain language of the alien employment certification application form. *Id.* at 834.

Moreover, we read the labor certification as a whole to determine its requirements. "The Form ETA 9089 is a legal document and as such the document must be considered in its entirety." *Matter of Symbioun Techs., Inc.*, 2010-PER-01422, 2011 WL 5126284 (BALCA Oct. 24, 2011) (finding that a "comprehensive reading of all of Section H" of the ETA Form 9089 clarified an employer's minimum job requirements).[1]

Having reviewed the labor certification in the present matter, we find it to reflect the following primary requirements for the offered position of senior SAP consultant: a U.S. master's or foreign equivalent degree in computer science, electrical engineering, electronics engineering, or business. If the Beneficiary's holds a master's degree, no training or experience is required. Alternatively, the labor certification indicates that the Beneficiary may qualify for the offered position with a U.S. bachelor's or foreign equivalent degree in one of the academic fields just noted, plus five years of progressive experience in systems analysis, management, or similar employment.

[1] Although we are not bound by decisions issued by the Board of Alien Labor Certification Appeals (BALCA), we, nevertheless, may take note of the reasoning in such decisions when considering issues that arise in the employment-based immigrant visa process.

B. Beneficiary's Academic Qualifications

A petitioner must establish a beneficiary's possession of all the education, training, or experience stated on an accompanying labor certification by a petition's priority date. 8 C.F.R. §§ 103.2(b)(1), (12); *see also Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

To establish the Beneficiary's academic qualifications for the job opportunity, the Petitioner has submitted the following evidence:

- An academic transcript and June 23, 2011, degree certificate from California), which reflects the Beneficiary's completion of all degree requirements for a master's in business administration;
- An April 28, 2007, degree certificate issued by (India), along with the Beneficiary's academic transcripts, which establish his completion of all degree requirements for its master's in business administration;
- A July 20, 2002, degree certificate issued by along with the Beneficiary's academic transcripts, which establish his successful completion of the examination for its bachelor's degree in business management; and
- A June 27, 2015, evaluation of the Beneficiary's Indian academic credentials, prepared by

In his August 27, 2015, decision, the Director found neither the Beneficiary's 2011 master's degree in business administration from nor his 2007 master's degree from to satisfy the master's degree requirement in Part H.4. of the labor certification. He noted that the Beneficiary's degree from had been awarded prior to that institution's 2014 accreditation and, therefore, could not be considered an advanced degree under the Act. Instead, he found the Beneficiary's bachelor's and master's degrees from when combined, to be the foreign equivalent of a U.S. bachelor's degree in business, the alternate educational degree allowed by the labor certification. The Director based his evaluation on information he had obtained from the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO).[2]

On appeal, the Petitioner contends that the Beneficiary's Indian degrees do provide him with the foreign equivalent degree to a U.S. master's in business administration, a finding reached in the June 27, 2015, evaluation it has submitted for the record. The Petitioner maintains that which it describes as a long-established and well-regarded evaluation agency, "takes a more comprehensive

[2] According to its website, AACRAO is "a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions and agencies in the United States and in over 40 countries around the world." AACRAO, http://www.aacrao.org/home/about (accessed June 10, 2016). Its mission "is to serve and advance higher education by providing leadership in academic and enrollment services." *Id.* According to the registration page for EDGE, EDGE is "a web-based resource for the evaluation of foreign educational credentials." AACRAO, EDGE, http://edge.aacrao.org/info.php (accessed June 10, 2016).

approach to the education equivalency evaluation" than EDGE. It also asserts that USCIS has provided no reason for dismissing individualized evaluation of the Beneficiary's Indian degrees in favor of the general information provided by the EDGE database.

We have reviewed the evaluation of the Beneficiary's master's degree in business administration, as well as the EDGE evaluation of that degree, which, as stated by the Director, finds it to represent the attainment of a level of education comparable to a bachelor's degree in the United States. While the Petitioner's assertions regarding the greater evidentiary value of the individualized evaluation are noted, we do not, for the reasons discussed below, find them persuasive.

The evaluation submitted by the Petitioner, although focused on the academic qualifications of the Beneficiary, does not offer an analysis of his academic credentials in support of its conclusions. The evaluator, states the degrees awarded the Beneficiary, the dates of those degrees, the requirements for admission to 3-year bachelor of business management and 2-year master of business administration programs, as well as its academic standing in India. She does not, however, discuss the reasoning that led her to conclude that the Beneficiary's bachelor's and master's degrees in business should be viewed as the foreign equivalents of these same degrees in the United States. Although statement indicates that the Beneficiary's bachelor's and master's degree certificates were accompanied by statements of marks listing his coursework, she does not discuss this coursework as compared with that required by U.S. bachelor's and master's degree programs in business administration. Neither does she weigh the credit hours earned by the Beneficiary in completing his degrees against those needed for U.S. bachelor's and master's degrees. Accordingly, the submitted evaluation does not persuade us that the credentials equivalency provided by EDGE should be discounted in this case. We use credentials evaluations as advisory opinions only. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm'r 1988). The submission of statements from experts supporting the petition is not presumptive evidence of eligibility

Although credentials equivalencies provided by EDGE are not individualized, we consider EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies.[3] We also note that authors for EDGE must work with a publication consultant and a Council Liaison with AACRAO's National Council on the Evaluation of Foreign Educational Credentials.[4] If placement recommendations are included, the Council Liaison works with the author to give feedback and the publication is subject to final review by the entire Council. *Id.*

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[3] Federal courts have upheld our use of EDGE. *See Confluence Intern., Inc. v. Holder*, 2009 WL 825793 (D.Minn. March 27, 2009); *Tisco Group, Inc. v. Napolitano*, 2010 WL 3464314 (E.D.Mich. August 30, 2010). *See alsoSunshine Rehab Services, Inc.* 2010 WL 3325442 (E.D.Mich. August 20, 2010) (concluding that USCIS was entitled to prefer the information in EDGE and did not abuse its discretion in reaching its conclusion.)

[4] *See An Author's Guide to Creating AACRAO International Publications*, http://www.aacrao.org/Libraries/Publications_Documents/GUIDE_TO_CREATING_INTERNATIONAL_PUBLICATIONS_1.sflb.ashx.

The credential advice provided in EDGE states: "Master of Arts, Business Administration, Computer Management, Commerce, Fine Arts, or Science represent attainment of a level of education comparable to a bachelor's degree in the United States." Accordingly, we find the evidence of record to establish that the Beneficiary holds the foreign equivalent degree of a U.S. bachelor's degree in business administration, rather than the master's degree claimed by the Petitioner.

C. Beneficiary's Employment Experience

The record demonstrates that the Beneficiary has the foreign equivalent of a U.S. bachelor's degree, rather than a U.S. master's degree. Therefore, to establish him as an advanced degree professional under the Act, the Petitioner must also demonstrate that he has the minimum of 5 years of progressive post-baccalaureate experience, as required by the regulation at 8 C.F.R. § 204.5(k)(2) to establish the equivalent of a master's degree.

To establish a beneficiary's employment experience, the regulation at 8 C.F.R. § 204.5(g)(1) requires:

> [E]vidence relating to qualifying experience or training shall be in the form of letter(s) from current or former employer(s) or trainer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien or of the training received. If such evidence is unavailable, other documentation relating to the alien's experience or training will be considered

In his August 27, 2015, decision, the Director noted that the Petitioner had submitted a number of experience letters to establish the Beneficiary's qualifying work experience, but that much of this experience had been gained prior to the date on which the Beneficiary had acquired the foreign equivalent of a U.S. baccalaureate degree and, therefore, could not be considered because the experience was not post-baccalaureate. As a result, the Director concluded that the record did not demonstrate that the Beneficiary had the 5 years of qualifying employment required by the instant labor certification.

On appeal, the Petitioner asserts that the Beneficiary's employment experience should be considered from the date on which he was awarded his Indian bachelor's degree in 2002, not the 2007 date on which he received his 2007 Indian master's degree. The Petitioner resubmits the following experience letters, which, it asserts, provide the Beneficiary with 6 years of qualifying employment experience:

- Marketing Manager, November 2008 to December 2009;
- Manager-RCU (Liabilities), June 2007 to October 2008;
- Area Sales Manager, February 2006 to May 2007;

- Sales Officer- from December 2002 to January 2006; and
- Customer Relations Executive, from June 2001 to November 2002.[5]

The Petitioner's assertion regarding the starting point for our consideration of the Beneficiary's employment experience does not, however, take into account the definition of advanced degree at 8 C.F.R. § 204.5(k)(2). As previously discussed, the regulation stipulates that where an advanced degree is to be based on a baccalaureate degree and 5 years of progressive experience, the qualifying experience must follow the award of the U.S. or foreign equivalent degree. Here, the Beneficiary did not obtain the foreign equivalent of a U.S. bachelor's degree until awarded him a master's degree in business administration on April 28, 2007. Accordingly, the only part of the Beneficiary's employment experience that may be considered in this matter is that which he acquired after April 28, 2007. This includes onlyhis employment with and

In Part J. of the labor certification, the Beneficiary claims to have worked for as a marketing manager from November 15, 2008, until December 20, 2009, and as a manager-RCU with from June 20, 2007, until October 25, 2008. However, this experience, which when combined totals approximately 2.5 years, does not provide the Beneficiary with the 5 years of experience in systems analysis, management, or a related occupation required by the labor certification. Moreover, the record does not support the descriptions of the duties that the Beneficiary claims to have performed for and

In the labor certification, which he signed on April 21, 2015, as being true and correct under penalty of perjury, the Beneficiary stated that while a marketing manager at he developed pricing strategies; identified, developed and evaluated marketing strategy; evaluated the financial aspects of product development; formulated, directed and coordinated marketing activities and policies; directed the hiring, training and performance evaluations of marketing and sales staff; provided oversight of daily activities of marketing and sales staff; negotiated contracts with vendors and distributors; and established distribution networks and strategies. In describing his employment with the Beneficiary indicated that he had developed and sustained a system for fraud identification; developed and maintained fraud control agencies in the region; leveraged the firm's capabilities to maximize productivity; developed and implemented processes for improving the quality of sourcing; conducted audits of sourcing partners; maintained control over acquired portfolio and managed revenue leakage; recommended process/policy changes to strengthen transaction processing; assisted the Risk Management Group in research and analysis of industries/clients/markets; provided regular anti-money laundering and KYC training; provided a

[5] The Petitioner, as reflected by the labor certification, currently employs the Beneficiary as a senior SAP HR consultant. It does not assert that its employment of the Beneficiary should be considered qualifying employment and we note that in response to Part J.21. of the labor certification (Did the alien gain any of the qualifying employment with the employer in a position substantially comparable to the job opportunity requested?), the Petitioner checked "N/A," not applicable. Accordingly, the Beneficiary's experience with the Petitioner has not been considered in our review of the record.

detailed fraud control MIS; and monitored and maintained TAT for the region; and monitored and controlled the regional budget.

The above job descriptions are not, however, supported by the experience letters that the Petitioner submitted pursuant to 8 C.F.R. § 204.5(g)(1).

In a July 9, 2015, statement, Director, states that, during the period November 2008 to December 2009, the Beneficiary provided functional expertise on SAP standard business processes to the SAP HCM module; worked on system design documents for the SAP HCM module; prepared business process procedures and functional specifications for SAP HCM; worked on SAP HCM core modules; coordinated with other module SAP consultants for integration requirements; provided functional specifications to the technical team for any customized developments; partnered with sales and marketing teams in support of strategic accounts; provided qualitative and competitive market research analysis; initiated and produced comprehensive quantitative price-point analysis on competitors; increased customer satisfaction by reducing machine downtime; interacted with product teams and other functions to guarantee implementation of customer orders; involved in carrying out unit testing, parallel testing, integration testing, and user acceptance testing for entire "life cycle" of payroll, personnel administration, organization management, benefits and time management; and prepared test plans and cases based on client requirements in the "Mercury Quality center."

A July 16, 2015, statement from regional manager for reflects that the Beneficiary performed the following duties as a manager-RCU from June 2007 to October 2008: participated in translating business requirements into SAP HR/HCM solutions; participated in study of business processes and requirement gathering, and prepared business blueprint per client requirements; performed integration testing of SAP HCM, PA, OM, PY, benefits, time management and payroll modules; involved in executing and testing SAP custom programs and custom tables interfacing with vendor applications; reviewed business requirements and configured process garnishment orders; involved in cycle of implementation, leading implementation efforts, and maintaining strict turnaround time adherence; conducted weekly training sessions for vendors and performance reviews of agent activities; managed business team and provided policy change updates; generated regular Management Information Systems on fraud trends; prepared test scripts for testing configured scenarios; participated in blue print documentation for various modules and implemented projects; and tested and validated interfaces file from SAP server.

Having compared the job descriptions in the above statements with those the Beneficiary provided in the labor certification, we do not find the record to offer reliable evidence of the Beneficiary's qualifying experience. The above statements, which discuss the Beneficiary's prior employment in terms of his SAP expertise and responsibilities, depict employment that appears largely unrelated to the managerial positions described by the Beneficiary, who indicated no involvement in the development or management of any SAP processes. Although in several instances, the duties described in the statements from and are similar to those listed by the Beneficiary, they are insufficient to establish the employment they describe as the employment

claimed by the Beneficiary. Accordingly, we do not find the record to establish that the Beneficiary has the managerial experience he claimed in the labor certification. Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of the evidence submitted in support of the requested immigration benefit. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Therefore, even if the Beneficiary's employment with BSL Scaffolding and ICICI Bank had totaled the required 5 years, we would not find it to satisfy the requirements of the labor certification.

For the reasons already discussed, the record does not establish that the Beneficiary has a U.S. master's or foreign equivalent degree in a field of study required by the labor certification. Neither does it demonstrate that he is eligible for the job opportunity based on a combination of a U.S. bachelor's or foreign equivalent degree and 5 years of progressive, post-baccalaureate experience. Therefore, the Petitioner has not demonstrated that the Beneficiary is qualified for the offered position, or for classification as an advanced degree professional under section 203(b)(2) of the Act. Accordingly, we will affirm the Director's denial of the visa petition.

II. ABILITY TO PAY PROFFERED WAGE

The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

> *Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

A petitioner must establish that its job offer to the beneficiary is a realistic one. Because the filing of a labor certification application establishes a priority date for any immigrant petition later based on the labor certification, a petitioner must establish that the job offer was realistic as of the priority date and that the offer remains realistic for each year thereafter, until the beneficiary obtains lawful permanent residence. A petitioner's ability to pay the proffered wage is an essential element in evaluating whether a job offer is realistic. *See Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg'l Comm'r 1977); *see also* 8 C.F.R. § 204.5(g)(2).

To determine a petitioner's ability to pay the proffered wage, USCIS first examines whether the petitioner was employing the beneficiary as of the date on which the labor certification was accepted for processing by DOL and whether it continues to do so. If the petitioner documents that it has employed the beneficiary at a salary equal to or greater than the proffered wage, that evidence may be considered *prima facie* proof of the petitioner's ability to pay pursuant to 8 C.F.R. § 204.5(g)(2). If the petitioner does not demonstrate that it employed and paid the beneficiary at an amount at least equal to the proffered wage during the required period, USCIS then examines the net income figure reflected on the petitioner's federal income tax returns, without consideration of depreciation or other expenses. *River Street Donuts, LLC v. Napolitano*, 558 F.3d 111 (1st Cir. 2009); *Taco*

Especial v. Napolitano, 696 F. Supp. 2d 873 (E.D. Mich. 2010), *aff'd*, No. 10-1517 (6th Cir. Nov. 10, 2011).[6] If the petitioner's net income during the required time period does not equal or exceed the proffered wage, or when added to any wages paid to the beneficiary does not equal or exceed the proffered wage, USCIS reviews the petitioner's net current assets.

In cases where neither a petitioner's net income nor its net current assets establish its ability to pay the proffered wage during the required period, USCIS may also consider the overall magnitude of the petitioner's business activities. *Matter of Sonegawa*, 12 I&N Dec. 612 (Reg'l Comm'r 1967). In assessing the totality of a petitioner's circumstances, USCIS may consider such factors as the number of years it has been in business, its record of growth, the number of individuals it employs, abnormal business expenditures or losses, its reputation within its industry, whether the beneficiary is replacing a former employee or an outsourced service, or any other evidence it deems relevant.

Where a petitioner has filed Forms I-140 for multiple beneficiaries, it must demonstrate that its job offer to each beneficiary is realistic, and that it has the ability to pay the proffered wage to each. 8 C.F.R. § 204.5(g)(2). *See Great Wall,* at 144-45; *see also Patel v. Johnson*, 2 F. Supp. 3d 108, 124 (D. Mass. 2014) (upholding our denial of a petition where a petitioner did not demonstrate its ability to pay multiple beneficiaries). In determining whether a petitioner has established its ability to pay the proffered wage to multiple beneficiaries, USCIS adds together the proffered wages for each beneficiary for each year starting from the priority date of the petition being adjudicated, and analyzes the petitioner's ability to pay the combined wages. However, the wages offered to the other beneficiaries are not considered after the dates any beneficiary obtained lawful permanent residence, or after the date a Form I-140 petition was withdrawn, revoked, or denied without a pending appeal. In addition, USCIS will not require a petitioner to establish the ability to pay additional beneficiaries for any year that the beneficiary of the petition under consideration was paid the full proffered wage.

In the present case, the record reflects that, in 2014, the Petitioner paid the Beneficiary $71,813.84, or $28,960.16 less than the proffered wage, and, therefore, does not demonstrate its ability to pay on this basis. While the Petitioner's 2014 Form 1120, U.S. Corporation Income Tax Return, reflects sufficient net income, $70,790, and net current assets, $167,920, to cover the difference between the proffered wage and the actual wages paid to the Beneficiary, USCIS databases reflect that the Petitioner had multiple Form I-140 petitions pending or approved at the time it filed the instant visa petition and thereafter. Therefore, to establish its ability to pay based on its net income or net current assets, the Petitioner must demonstrate that one or the other of these totals is sufficient to cover the proffered wages of these additional beneficiaries, as well as the proffered wage it must pay the Beneficiary.

[6] Reliance on federal income tax returns as a basis for determining a petitioner's ability to pay the proffered wage is well established by judicial precedent. *Elatos Restaurant Corp. v. Sava*, 632 F. Supp. 1049, 1054 (S.D.N.Y. 1986) (citing *Tongatapu Woodcraft Hawaii, Ltd. V. Feldman*, 736 F.2d 1305 (9th Cir. 1984)); *see also Chi-Feng Chang. v. Thornburgh*, 719 F. Supp. 532 (N.D. Texas 1989); K.*C.P. Food Co., Inc. v. Sava*, 623 F. Supp. 1080 (S.D.N.Y. 1985); *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983).

In his decision, the Director noted that the Petitioner had not provided evidence relating to its ability to pay the proffered wages of all of the individuals for whom it had filed Form I-140 petitions, as required by his May 27, 2015, request for evidence (RFE). He, therefore, found that the Petitioner had not established its ability to pay the proffered wage.

On appeal, the Petitioner asserts that no statutory or regulatory provisions require it to reestablish its ability to pay the proffered wages of previously approved Form I-140 beneficiaries. The Petitioner, however, misunderstands the purpose of the Director's May 27, 2015, request for information on the proffered and actual wages of its other Form I-140 beneficiaries. The Director's RFE did not seek to have the Petitioner reconfirm its ability to pay in these cases, but to establish whether, in light of its other proffered wage obligations, it has the financial resources necessary to pay the instant Beneficiary the proffered wage and is making a realistic job offer. The Director denied the visa petition because he found the Petitioner had not submitted all of the information required to make this determination.

To overcome the basis for the Director's denial, the Petitioner on appeal submits a chart listing the Beneficiary and seven other individuals for whom it filed Forms I-140 in 2013 and 2014, which also reflects these individuals' proffered and actual wages. In support of the chart, the Petitioner provides the Forms W-2 it issued to these beneficiaries in 2014, and its 2014 Form 1120. The Petitioner asserts that its net current assets of $167,902 are sufficient to cover the difference between the actual wages paid to its Form I-140 beneficiaries and the proffered wages listed on the chart.

To establish a continuing ability to meet its combined proffered wage obligation, the Petitioner submits a second chart that projects the actual wages to be paid these same individuals in 2015, which is supported by a monthly earnings statement for each. The chart reflects that all eight employees, including the Beneficiary, will earn above their respective proffered wages in 2015.

While we find the Petitioner's chart for 2014 to reflect the number of beneficiaries for whom I-140s were pending or approved during that year, it does not accurately reflect the Petitioner's combined proffered wage obligation to these individuals. The actual wages reported for $83,581.00, should read $35,105, as stated on the beneficiary's 2014 Form W-2. The wages reported for $88,271, should read $79,533.47, the amount reflected on his Form W-2. Additionally, we find errors in the Petitioner's calculation of the differences between the proffered and actual wages reported for the following beneficiaries: and When recalculated with the corrected information, the difference between the proffered and actual wages listed on the chart totals $220,657, rather than the $147,794 stated by the Petitioner. Therefore, contrary to the Petitioner's claim on appeal, the record does not establish that its net current assets, when combined with the wages it paid to its multiple Form I-140 beneficiaries in 2014, are sufficient to meet its combined proffered wage obligation in this matter.

We also find the chart the Petitioner has submitted to establish the actual wages to be earned by its multiple Form I-140 beneficiaries in 2015, is insufficient to demonstrate this claim. First, we note that none of the monthly wages reflected on the chart are supported by their respective earnings

statements and the Petitioner has offered no explanation for the differing totals. Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of the evidence submitted in support of the requested immigration benefit. *Ho*, at 591-92. Further, even if there were no inconsistencies in the monthly wages reported on the chart for 2015, we would not accept the Petitioner's unsupported projections of income in considering its ability to pay. A petitioner cannot meet its burden of proof simply by claiming a fact to be true, without supporting documentary evidence. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)); *see also Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). A petitioner must support assertions with relevant, probative, and credible evidence. *Chawathe*, at 369.

In that the record does not establish the Petitioner's ability to pay based on the wages paid to the Beneficiary or the net income or net current assets reported in its 2014 tax return, we now turn to a consideration of whether the evidence of record establishes that the Petitioner, like the employer in *Sonegawa*, may demonstrate its ability to pay based on the totality of its circumstances.

In *Sonegawa*, the petitioning entity had been in business for more than 11 years and routinely earned a gross annual income of approximately $100,000. However, during the year in which the petition was filed in that case, the petitioner's income declined significantly as a result of changing business locations and paying rent on both the old and new locations for five months. There were also significant moving costs and a period of time when the petitioner was unable to do regular business. The former Immigration and Naturalization Service (now USCIS) nevertheless found that the petitioner's prospects for resuming successful business operations had been established as the record demonstrated that she was a fashion designer whose work had been featured in national magazines, that she had a client list that included celebrities and individuals who appeared on lists of the best-dressed women in California, and that she was a lecturer on fashion design at design and fashion shows throughout the United States, and at colleges and universities in California.

In the present case, the record does not provide a similar context in which to consider the Petitioner's ability to pay. Although it contains the Petitioner's 2013 and 2014 federal tax returns and Forms 941, Employer's Quarterly Federal Tax Returns, for 2014 and the first quarter of 2015, this evidence is not sufficient to demonstrate how the Petitioner's business has performed since its founding in 2010, including whether it has experienced a significant and steady increase in income and personnel. Further, unlike the record in *Sonegawa*, which established the employer as a leader in the California fashion industry, the record in the present case does not offer any evidence that the Petitioner's reputation within its industry should be a factor in determining its ability to pay.

We note that the Petitioner asserts that its ability to "maintain a very substantial payroll" should be considered in determining its ability to pay in this matter. However, we find its reliance on wage expenses to be misplaced. Although the Petitioner's Forms 1120 for 2013 and 2014 reflect that it paid more than $2 million in salaries and wages in both years, meeting substantial wage obligations does not establish its ability to pay the proffered wage. Accordingly, the record does not establish the Petitioner's ability to pay based on the totality of its circumstances.

For the reasons already discussed, the record does not establish the petitioner's ability to pay the proffered wage from the priority date onward. Therefore, we will affirm the Director's denial of the visa petition on this basis as well.

III. CONCLUSION

To qualify for the offered position of senior SAP consultant, the instant labor certification requires the Beneficiary to have a master's or foreign equivalent degree in computer science, electrical engineering, electronic engineering, or business, or a U.S. bachelor's or foreign equivalent degree in one of these same fields, plus 5 years of progressive experience as a systems analyst, manager or a related employment. However, as previously discussed, the record does not establish that the Beneficiary holds a master's degree. Neither does it demonstrate that, as of the visa petition's priority date, the Beneficiary, who has the foreign equivalent of a U.S. bachelor's degree in business administration, had the 5 years of progressive experience required by the labor certification. The record also fails to establish the Petitioner's ability to pay the proffered wage from the priority date forward.

We will, therefore, affirm the Director's denial of the visa petition for the above stated reasons, with each considered as an independent and alternative basis for the denial of the petition. In visa petition proceedings, it is a petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I& Dec. 127, 128 (BIA 2013). Here that burden has not been met. The appeal will be dismissed.

ORDER: The appeal is dismissed.

Cite as *Matter of D-S-, Inc.*, ID# 16884 (AAO June 20, 2016)